

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 252 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ASSOCIATED BUSINESS CORPN.

Appearance:

MS HANSA PUNANI, ld.AGP for appellants

MR AB ACHARYA for opponent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 19/01/2001

ORAL JUDGEMENT

This is the defendants' First Appeal against the judgment and decree dated 6th July 1985 passed by the 4th Jt.Civil Judge (SD), at Vadodara in Special Civil Suit No.336 of 1982 whereby the plaintiff's suit was decreed

for a sum of Rs.76,410/- towards the price for the 600 Brass Rubbles supplied by the plaintiff from Halol Quarry as per Schedule D-1 of the agreement.

2. The plaintiff is a registered firm - a 'B' Class Government approved firm of Public Works Department. The defendants had invited tenders for supply of Brass Rubbles for the work of Deo Irrigation Scheme. The plaintiff had submitted its tenders and it appears that prior to the acceptance of the tender, the office of the Executive Engineer, Irrigation Project had made pre-tender negotiations with the plaintiff. The tenders had in fact been invited in the month of Sept.1980 and on 5.12.1981, the plaintiff was informed that its tender amounting to Rs.4,59,450/- had been accepted. The plaintiff was called upon to execute the necessary agreement and documents as per the requirements of the contract. The plaintiff was required to supply 600 Brass Rubbles. The case of the plaintiff is that as per the specifications, 600 Brass Rubbles were supplied at the site of the Dam. Later on objections were raised by the Department and an objection was taken that the Rubbles supplied were not as per the terms and conditions of the tender. The payment was not made and an objection was taken about the material supplied being substandard. After giving the statutory notice under Sec. 80 of the Code of Civil Procedure on 4.12.1981, the present suit was filed for recovery of the amount of Rs.76,410/- and the interest has also been claimed.

3. The suit was contested and the Written Statement at Exh.18 was filed. The defendants took the plea that in fact the plaintiff had not supplied 600 Brass Rubbles at the Dam site and instead only a small quantity of Rubbles was supplied and they too were not in accordance with the terms and conditions of the tender; that the plaintiff was required to supply 600 Brass Rubbles from the Halol Quarry only but it supplied the small quantity of Rubbles not from Halol Quarry but from the nearby hills. It was also alleged that the stones supplied by the plaintiff did not fulfil the technical specifications and were rejected. That as per the tender, the plaintiff had quoted the rates for supply of Rubbles from Halol Quarry, but in fact it had supplied the stones from Dholikui Quarry and by doing so, the plaintiff committed a breach of the terms and conditions of the agreement between the parties. That the plaintiff's action to supply Rubbles from nearby hills of Dholikui Quarry disentitled the plaintiff from claiming anything from the defendants. That as a matter of fact, the plaintiff had supplied only about 18 Brass Rubbles at the Dam site by

making 24 tractor trips between 6.3.1981 and 12.3.1981.

4. On the pleadings of the parties, the following issues were framed and the findings were recorded as under against each of the issues:

1. Whether the plaintiff firm Yes.
is registered under the
Partnership Act? If not,
what is the effect?
2. Whether the defendants Yes.
prove that the plaintiff
had agreed to supply
Rubbles from Halol Quarry?
3. Whether the defendants Yes.
prove that the plaintiff
failed to supply Rubbles
as per the agreed quality?
4. Whether the defendants No
prove that the plaintiff
failed to supply Rubble
within the stipulated
time?
5. Whether the defendants No
prove that they have not
used the goods supplied
by the plaintiff and have
rejected the same for want
of agreed specifications?
6. Whether it is proved that Yes.
the plaintiff has supplied
the goods to the defen-
dants as per an agreement
between the parties?
7. What amount, if any, the Suit claim.
plaintiff is entitled to?
8. What order and decree? As per order.

5. I have heard learned Counsel for the appellants and the respondent. I have gone through the impugned judgment and perused the record. On behalf of the appellants, it was argued that the entire quantity of the Rubbles as per the agreement had not been supplied and

whatever material was supplied was substandard and the plaintiff had been asked to provide the same. Learned Counsel for the appellants has placed strong reliance on the deposition of defendant witness no.1 who is examined at Exh.60 who has deposed that as per the conditions of the tender, the material was to be supplied at the Deo Dam site from Halol Quarry and in terms of the tender, it was to be of 30 to 80 kg. weight, but the plaintiff supplied the material from Dholikui Quarry instead of Halol Quarry and therefore, the same was rejected and the plaintiff was informed accordingly vide Mark 61/3. A letter dated 12th March 1981, Mark 61/4 had been written by the Executive Engineer. This witness who was Deputy Executive Engineer has narrated the procedure which is followed and has pointed out that as and when the contractor supplied the material, their employee gives the receipt. He has produced the receipt book Mark 61/5 and that as and when the contractor supplies the material the receipt is given and it is also signed by the concerned driver who brings the material and that the employee checks the material and signs the receipt book. This witness has also stated that he himself was present on the site in the second week of March 1981, but no material had been supplied and without supplying the material, the suit has been filed. In cross examination, he has admitted that the plaintiff had supplied the material between 6.3.1981 and 12.3.1981 but the material was duplicate. To a pointed question put to him in cross examination as to what arrangement he had made about the measurement of the material supplied, he has answered that there was no question of taking the measurement. He has then stated that as and when any controversy of this nature arises, the Supdt. Engineer was to be apprised but he does not know as to whether any order has been passed by the Supdt. Engineer or not. A pointed question was also put to him as to how his employee had rejected the material and he has replied that as per his guidance, the material had been rejected. In para 15 he has stated that from 6.3.1981 to 9.3.1981, the plaintiff was not informed about the rejection of the material and he has then stated of his own that the intimation of the rejection had been given on 10th March 1981. No written intimation was given. In para 18, he has admitted that he had no printed forms for the receipts; that later on the material was supplied for this contract by Parmanand Soni, Abbas, Aradhana Builders, Prajapati Contractors. In the end, he has stated that it was wrong to suggest that 600 Brass Rubbles had been supplied. As against this, the opponent plaintiff has relied upon the deposition of witness no.1 namely, Dadubhai Shankarbhai who is examined at Exh.24. This witness has stated about

the procedure for supply of material and has stated that 600 Brass Rubbles had been supplied for a sum of Rs.76,410/- in terms of the tender. He has stated that at the time when the material was supplied, no defect was pointed out but when it came to the question of payment, false objections were taken, money was demanded from him and since he did not pay the money, as demanded, the objections were taken about the quality of the material. The witness has made reference to the letters at Exhs.34, 35 and 36 dated 12th March 1981, 12th June 1981, and 5th Oct.1981 etc. and has submitted that the material supplied by him had been made use of and that the plaintiff had categorically requested that the quality of the same may be got tested in a laboratory, but no such laboratory test was conducted. He has stated that on 5th January 1982, his partner Kantibhai had gone to the site. He has denied the suggestion that no material had been supplied prior to 14th Oct.1981. The plaintiff has in fact produced all the carting slips vide list Exhs.33 to 250 and these carting slips have been found to be proved as produced in this case. The carting contractor Kanaiyalal Ochchavalal has been examined at Exh.53 who has stated that it was through his truck that the plaintiff had taken the Rubbles at the Dam site. The carting slips at Exhs.84 to 141 produced vide Exh.33 were issued by this carting contractor to the plaintiff and he has stated that he had collected the Rubbles in the Quarry and the consignment was unloaded at the Dam site and the plaintiff had paid the carting charges. This witness has also stated in the cross examination that the materials were brought from Halol Quarry and the consignments were made at the Dam site; when the consignment was unloaded on behalf of the Government, nobody used to acknowledge the receipt for the delivery of the consignments. The other witness, carting contractor, namely, Manubhai Laxmanbhai has been examined at Exh.50 who has stated that in the year 1981, the plaintiff had hired his truck to take the Rubbles at the Dam Site. He has identified the carting slips produced vide list Exh.33. He has also stated that on unloading of the consignment they had not been issued any sort of delivery receipt on behalf of the Government and that along with his truck, the plaintiff had also hired another six to seven trucks to bring the Rubbles at the Dam site. No material or evidence of any contemporaneous nature has been brought on record to show that the material was substandard and was not upto the mark. On the contrary, it has been established that the plaintiff had supplied 600 Brass Rubbles at the Dam site. The seals of the Dy. Executive Engineer have been put on the receipt books in token of the supply of the materials.

On the question that no acknowledgment is given by the Government in token of the receipt of the material, the plaintiff has examined Shri Parmanand Bhailalbhai and Satishkumar who were also approved Government Contractors who have also stated that the Government never gave any acknowledgment for the goods collected by the contractors at the site of work.

6. On consideration of the evidence in its entirety as discussed above, I find that the supply of the required quantity Brass Rubbles is proved and the plaintiff has been rightly held to be entitled to recover the sum of Rs.76,410/- from the defendants. No cogent evidence has been produced by the defendants to hold that the material supplied was substandard and Laboratory Test sought by the plaintiff was not conducted although the receipt of certain number of Brass Rubbles has been admitted. The findings on the issues have been correctly arrived at by the trial Court for good and valid reasons and I agree with the reasoning as well as the conclusions arrived at by the trial Court. There is no merit in this appeal. The same is hereby dismissed. No order as to costs.

(M.R. Calla, J.)

Sreeram.